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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
NORTHERN DIVISION

In re	§	CASE NO. 9:18-AP-01058-DS
	§	
CHANNEL TECHNOLOGIES GROUP, LLC,	§	
<i>Debtor.</i>	§	
<hr/>		
CORPORATE RECOVERY ASSOCIATES,	§	RESPONSE TO GRANT
LLC, as Trustee for the Liquidating Trust of	§	THORNTON LLP's AMENDED
Channel Technologies Group, LLC,	§	MOTION TO DISMISS
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	
BLUE WOLF CAPITAL PARTNERS, LLC, et	§	
al.,	§	
<i>Defendants.</i>	§	
	§	

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S
AMENDED MOTION TO DISMISS FIRST AMENDED COMPLAINT**

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1 Plaintiff Corporate Recovery Associates, LLC, solely in its capacity as Trustee
2 for the Liquidating Trust of Debtor Channel Technologies Group, LLC (“Plaintiff” or
3 “CRA”), by and through its undersigned counsel, hereby responds to Defendant
4 Grant Thornton LLP’s (“Defendant” or “Grant Thornton”) Amended Motion to
5 Dismiss and, in support hereof, hereby shows as follows:
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8 **I. INTRODUCTION**

9 Grant Thornton does not meet its burden to justify dismissal of CRA’s well-
10 pled claims. CRA’s First Amended Complaint contains sufficient factual detail to
11 establish the plausibility of its claims that (1) Channel Technologies Group, LLC’s
12 (“CTG”) management and Blue Wolf Capital Partners, LLC, Blue Wolf Capital Fund
13 II, L.P., Gladstone Investment Corporation, Blue Wolf Capital Advisors L.P., and
14 BW Piezo Holdings, LLC (“BW Piezo”) (collectively, “Blue Wolf Entities”) directed
15 CTG to make actual and constructive fraudulent transfers in violation of the
16 Bankruptcy Code and California Law; (2) that CRA has the right to seek the
17 avoidance of those transfers to Grant Thornton; and (3) that Grant Thornton is liable
18 for unjust enrichment and conversion regarding the transfers CTG made to it.
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21 CRA alleges detailed facts demonstrating how CTG’s management and the
22 Blue Wolf Entities took advantage of its control of CTG to exhaust and transfer the
23 entirety of CTG’s assets to themselves and for the benefit of other separate entities
24 absent CTG receiving any reasonably equivalent value. Faced with CRA’s well-pled
25 factual allegations, Grant Thornton misstates CRA’s pleading burden and
26 improperly asks the Court to decide complex factual issues *at the pleading stage*
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1 *(when CRA’s allegations must be accepted as true)*—and without the benefit of
2 discovery. Thus, CRA respectfully submits that Grant Thornton’s motion must be
3 denied.

4 **II. ARGUMENT**

5 **A. Rule 12(b)(6) Standard**

6 All pleadings setting forth claims for relief must include a short and plain
7 statement of the claim showing that the pleader is entitled to relief. 2 Moore’s Fed.
8 Practice Civ. § 8.04. A plaintiff must plead “enough facts to state a claim to relief
9 that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).
10 “[F]acial plausibility” exists “when the plaintiff pleads factual content that allows
11 the court to draw the reasonable inference that the defendant is liable for the
12 misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556. The federal pleading
13 standard “does not require ‘detailed factual allegations,’” *Ashcroft v. Iqbal*, 556 U.S.
14 662, 678 (2009), although the Complaint must “give the defendant fair notice of what
15 . . . the claim is and the grounds upon which it rests,” *Erickson v. Pardus*, 551 U.S.
16 89, 93 (2007).

17 If a plaintiff alleges fraud as a cause of action, the plaintiff must plead with
18 particularity the circumstances constituting fraud. Fed R. Civ. P. 9(b). “A complaint
19 alleging fraud meets the Rule 9(b) standard if it alleges the time, place, and content
20 of the fraudulent statements, including reasons why the statements are false.
21 *United States v. Hempfling*, 431 F. Supp. 2d 1069, 1075 (E.D. Cal. 2006) (citing *In*
22 *re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1547-48 (9th Cir. 1994) (en banc), *rev’d on*
23 *other grounds*, 60 F.3d 591 (9th Cir. 1995)). “Where fraud allegedly occurred over a
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1 period of time, however, Rule 9(b)'s requirement that the circumstances of fraud to
2 be stated with particularity are less stringently applied." *Id.* Further, "plaintiffs
3 are not absolutely required to plead the specific date, place, or time of each of the
4 fraudulent acts, provided they use some alternative means of injecting precision and
5 some measure of substantiation into their allegations of fraud." 2 Moore's Fed.
6 Practice – Civ. § 9.03.
7

8 Motions to dismiss for failure to state a claim are disfavored and rarely
9 granted. *United States v. Hempfling*, 431 F. Supp. 2d 1069, 1075 (E.D. Cal. 2006).
10 "A complaint should not be dismissed unless it appears beyond doubt that plaintiff
11 can prove no set of facts in support of his claim which would entitle him to relief."
12 *Van Buskirk v. CNN, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002). Moreover, in deciding
13 a motion to dismiss, a court "must accept all factual allegations of the complaint as
14 true and draw all reasonable inferences in favor of the nonmoving party." *TwoRivers*
15 *v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999).
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18 **B. CRA Sufficiently States Claims for Actual and Constructive**
19 **Fraudulent Transfers Pursuant to the Bankruptcy Code.**

20 Relevant to this Motion, CRA is seeking the avoidance of both actual and
21 constructive fraudulent transfers made by CTG to Grant Thornton from January
22 25, 2013 to March 15, 2017 under both the Bankruptcy Code and California law. In
23 its Amended Motion to Dismiss, Grant Thornton does not dispute that it received
24 transfers from CTG; instead, Grant Thornton argues that CRA has not sufficiently
25 pled enough factual detail regarding the transfers at issue or "information to support
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1 Plaintiff's claims sufficient to hold Defendant liable for fraud." Def.'s Am. Mot. to
2 Dismiss 5.

3 Grant Thornton's arguments illustrate a fundamental misunderstanding of
4 the applicable law.

5 Under the Bankruptcy Code, a liquidating trustee has the authority to
6 enlarge a debtor's estate by invalidating fraudulent transfers, thereby returning the
7 property to the debtor's estate. *Henry v. Official Comm. of Unsecured Creditors of*
8 *Walldesign, Inc. (In re Walldesign, Inc.)*, 872 F.3d 954, 959 (9th Cir. 2017) (citing 11
9 U.S.C. §§ 544(b)(1), 548(a)(1)(B)). "When a trustee has proven the avoidability of a
10 fraudulent transfer, the trustee may recover the property or its value from '(1) the
11 initial transferee of such transfer or the entity for whose benefit such transfer was
12 made; or (2) any [subsequent] transferee of such initial transferee.'" *Id.* (quoting 11
13 U.S.C. § 550(a)). A liquidating trustee has an absolute right of recovery against the
14 initial transferee and any entity for whose benefit such transfer was made. *Danning*
15 *v. Miller (In re Bullion Reserve of N. Am.)*, 922 F.2d 544, 547 (9th Cir. 1991). Thus,
16 CRA need not prove that Grant Thornton was engaged in fraud; CRA need only
17 ultimately prove that (1) the transfers at issue should be avoided; and (2) that Grant
18 Thornton was an initial transferee. CRA has met the applicable pleading standards
19 at this stage of the litigation as provided below.

20 **First**, to prevail on its claims for the avoidance of CTG's actual fraudulent
21 transfers, CRA must ultimately prove: (1) the transfers involved property of the
22 debtor; (2) the transfer were made within two years of the filing of the debtor's
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1 bankruptcy petition; and (3) the Debtor made the transfers or incurred the
2 obligations with actual intent to hinder, delay, or defraud any existing or resulting
3 creditor. 11 U.S.C. § 548(a)(1)(A).

4 CRA has met its burden of pleading facts establishing a plausible claim for
5 relief and pleading with particularity the circumstances constituting fraud. In its
6 First Amended Complaint, CRA pleads in the alternative that the Blue Wolf Entities
7 directed CTG's management to transfer CTG's property to pay for liabilities and
8 professional services for the benefit of other separate entities such as CTG Advanced
9 Materials. First Am. Compl. ¶¶ 33, 45, 89. CRA pled that those transfers covered
10 by the Bankruptcy Code were made or entered into after October 14, 2014, two years
11 prior to CTG's bankruptcy petition. *Id.* at ¶ 90. Additionally, in an exhibit
12 specifically incorporated into the First Amended Complaint, CRA provides greater
13 detail regarding the transfers made to Grant Thornton, including the period in
14 which the transfers took place, the total amount the transfers amounted to, and for
15 whose benefit the transfers were made. *Id.* at 29. CRA has pled that these transfers
16 were fraudulent because they were made in furtherance of a scheme perpetrated by
17 CTG's management and controlling shareholder to exhaust CTG's assets, preserve
18 CTG Advanced Material's assets, and ultimately put CTG into bankruptcy, thereby
19 hindering, delaying, or defrauding CTG's creditors from being able to collect on debts
20 owed. *Id.* at ¶ 44, 92. This scheme is rife with badges of fraud, and CRA pleads
21 numerous facts to support this, including incorporating by reference a number of
22 exhibits showing CTG paying for liabilities and expenses on behalf of CTG Advanced
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1 Materials and the Blue Wolf Entities without receiving reasonably equivalent value
2 in return. *Id.* at ¶ 44; Exs. 14–23. CTG and the Blue Wolf Entities concealed that
3 CTG Advanced Materials was not a subsidiary of CTG and misrepresented publicly
4 that CTG Advanced Materials was a subsidiary of CTG. *Id.* at ¶ 44; Exs. 19, 23–24.
5 After exhausting CTG’s assets to pay for CTG Advanced Material’s expenses, CTG’s
6 controlling shareholder sold CTG Advanced Materials, distributed the sales
7 proceeds to itself and its own creditors; what it did not do is transfer any of the sales
8 proceeds to reimburse CTG or CTG’s creditors. Indeed, after denuding CTG of
9 assets, the Blue Wolf Entities subsequently put an insolvent CTG into bankruptcy.
10 *Id.* at ¶ 39–41. Moreover, CRA has pled and incorporated by reference that Grant
11 Thornton was an initial transferee and knew that it was receiving payment from
12 CTG for services provided to entities other than CTG. *Id.* at ¶ 44; Exs. 19, 23. *See*
13 *also id.* at 29.

16 ***Second***, to prevail on its claims for avoidance of CTG’s constructive
17 fraudulent transfers, CRA must ultimately prove: (1) the transfers involved property
18 of the debtor; (2) the transfer were made within two years of the filing of the debtor’s
19 bankruptcy petition; (3) the Debtor did not receive reasonably equivalent value in
20 exchange for the property transferred; and (4) the Debtor was insolvent on the date
21 the transfer was made or obligation incurred, became insolvent as a result of the
22 transfers made or obligations incurred, or the remaining capital was unreasonably
23 small for the Debtor’s business. 11 U.S.C. § 548(a)(1)(B).
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As a threshold matter, Grant Thornton erroneously asserts that CRA must meet a heightened pleading standard for its constructive fraudulent transfer claims. Def. Am. Mot. at 9. “Unlike actual fraudulent transfer, Rule 9(b)’s particularity requirement does not apply to constructive fraudulent transfer claims.” *LaChapelle v. Dong Kwan Kim*, 2015 U.S. Dist. LEXIS 161801 *20, 2015 WL 7753235 (N.D. Cal. Dec. 1, 2015). Thus, CRA need only plead sufficient facts to establish a plausible claim for relief, a burden CRA meets and surpasses. In its First Amended Complaint, CRA pleads in the alternative that the Blue Wolf Entities directed CTG’s management to transfer CTG’s assets to pay for liabilities and professional services for the benefit of other separate entities, including CTG Advanced Materials. First Am. Compl. ¶¶ 33, 45, 99. CRA pled that those transfers covered by the Bankruptcy Code were made or entered into after October 14, 2014, within a period of two years prior to CTG’s bankruptcy petition. *Id.* at ¶ 100. And again, in an exhibit specifically incorporated into the First Amended Complaint, CRA provides greater detail regarding the transfers made to Grant Thornton, including the period in which the transfers took place, the total amount the transfers amounted to, and for whose benefit the transfers were made. *Id.* at 29. CRA has pled that these transfers were constructively fraudulent because CTG did not receive reasonably equivalent value, became insolvent as a result of the transfers, and was undercapitalized. *Id.* at ¶ 101–102. CRA supports this claim by pleading numerous facts and incorporating by reference a litany of exhibits showing CTG paying for liabilities and expenses on behalf of CTG Advanced Materials and the Blue Wolf Entities

1 without receiving reasonably equivalent value in return. *Id.* at ¶ 44; Exs. 14–23.
2 CRA also pleads that CTG was left insolvent and undercapitalized as a result of
3 these transfers. *Id.* at ¶ 33–38.

4 **C. CRA Sufficiently States Claims for Actual and Constructive**
5 **Fraudulent Transfers Pursuant to California Law.**

6 Grant Thornton relies on the same arguments it raises against CRA’s actual
7 and constructive fraudulent transfer claims based on the Bankruptcy Code to
8 challenge CRA’s actual and constructive fraudulent transfer claims based on
9 California law. *See* Def. Am. Mot. at 8–10. To prevail on a claim for actual and
10 constructive fraudulent transfer under the California Uniform Voidable
11 Transactions Act, a plaintiff must prove the same elements as under the Bankruptcy
12 Code discussed above. *See* Cal. Civ. Code §§ 3439.04(1) (actual fraudulent transfer);
13 3439.04(2) (constructive fraudulent transfer). One major difference is that pursuant
14 to the California Uniform Voidable Transactions Act, a plaintiff may seek the
15 avoidance of an actual fraudulent transfer made “not later than four years after the
16 transfer was made or the obligation was incurred or, if later, not later than one year
17 after the transfer or obligation was or could reasonably have been discovered by the
18 claimant.” § 3439.09(1). A plaintiff may also seek the avoidance of a constructive
19 fraudulent transfer made not later than four years after the transfers. § 3439.03(2).
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23 In short, the only tangible difference between what must be proven under the
24 Bankruptcy Code and California law is that California law allows for a longer
25 statute of limitations. Accordingly, for the same reasons discussed above, CRA has
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1 sufficiently plead a plausible claim for the avoidance of both actual and constructive
2 fraudulent transfers and Grant Thornton cannot justify dismissal of this claim.

3 **D. CRA Sufficiently States Claims for Unjust Enrichment and**
4 **Conversion.**

5 Grant Thornton's sole contention to dismiss CRA's claims for unjust
6 enrichment and conversion is that Rule 9(b)'s heightened pleading standard applies
7 because the causes of action are based on the same facts underlying the fraudulent
8 transfer claims. *See* Def. Am. Mot. at 10–11. Grant Thornton is wrong. Grant
9 Thornton does not address the sufficiency of the facts CRA pleads specifically
10 regarding its unjust enrichment and conversion claims, and Grant Thornton relies
11 exclusively on its prior arguments. *Id.*

13 **First**, Grant Thornton mistakenly assumes that CRA's unjust enrichment
14 and conversion claims rest entirely on CRA's allegations of fraud. CRA pleads these
15 claims in the alternative in the event a fact finder does not make an alter ego
16 determination or determines that the transactions meet the elements set out in the
17 Bankruptcy Code or California law to be considered fraudulent. *See* Pl.'s First Am.
18 Compl. ¶¶ 125– 32. The federal rules expressly allow CRA to set out claims in the
19 alternative. *See* FED. R. CIV. P. 8(d)(2)– (3). To prevail on its claim for unjust
20 enrichment, CRA need only prove that Grant Thornton received a benefit and that
21 benefit was conferred by fraud, coercion, or request. *Prakashpalan v. Engstrom,*
22 *Lipscomb & Lack*, 223 Cal. App. 4th 1105, 1132, 167 Cal. Rptr. 3d 832, 855 (2014).
23 To prevail on its claim for conversion, CRA must only prove that (1) CTG owns or
24 has a right to possession of some property, (2) Grant Thornton's conversion was by
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1 a wrongful act or by disposition of property rights; and (3) CTG suffered damages as
2 a result of Grant Thornton's conversion. *Lee v. Hanley*, 61 Cal. 4th 1225 (Cal. 2015).
3 CRA may prove these claims without relying on its allegations of fraud, and it has
4 alleged sufficient facts to rely on non-fraud averments to state a plausible claim for
5 relief on these claims. *See* Pl.'s First Am. Compl. at 125–32. For example, CRA has
6 pled that Grant Thornton received transfers from CTG for the benefit of other
7 entities, including CTG Advanced Materials. First. Am. Compl. At ¶ 126. CTG has
8 also pled that Grant Thornton's continued retention of these transfers is unjust
9 because CTG did not receive reasonably equivalent value and the transfers were of
10 CTG's assets. *Id.* at ¶ 33, 127. And, that Defendants acquired these benefits
11 through abuse of control. *Id.* at ¶ 33, 44; Exs. 19, 23. Finally, CRA has pled that
12 CRA suffered injury as a result of these transfers. *Id.* at ¶ 37–38, 132;

15 ***Second***, to the extent that these claims are partially grounded in fraud, CRA
16 need only satisfy the heightened pleading requirement for those facts. *See McGraw*
17 *Co. v. Aegis Gen. Ins. Agency, Inc.*, No. 16-cv-00274-LB, 2016 U.S. Dist. LEXIS
18 91124, at *12 (N.D. Cal. July 13, 2016) (holding that when plaintiffs allege some
19 fraudulent and some non-fraudulent conduct, “their fraud claims and allegations
20 thus do not subject the whole complaint to Rule 9(b)'s heightened-pleading
21 standard.”). Moreover, for the same reasons discussed above, CRA has in fact plead
22 with particularity the circumstances constituting fraud, thus satisfying the
23 heightened pleading standard required by Federal Rule of Civil Procedure 9(b).
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CONCLUSION

For the foregoing reasons, CRA respectfully requests the Court deny Grant Thornton's Motion to Dismiss in its entirety, and for any other and further relief, at law or in equity, to which they are justly entitled. Further, in the event the Court grants Grant Thornton's Amended Motion to Dismiss, CRA respectfully requests further opportunity to amend and that such dismissal be without prejudice. *See Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (holding that when dismissing a complaint for failure to state a claim, "a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts.").

1 Dated: January 2, 2019

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3 Respectfully submitted,

4
5 /s/



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21 **Trustee for the Liquidating Trust of**
22 **Debtor Channel Technologies Group,**
23 **LLC**
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of foregoing has been served upon all counsel of record by way of electronic filing this January 2, 2019.

/s/ Christian A. Orozco

Christian A. Orozco